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ABSTRACT

This brief provides information to parents of students with disabilities on preparing students for reaching the age of majority and assuming responsibility for their education and life choices. It begins by reviewing regulations under the Individuals with Disabilities Education Act that give states the authority to elect to transfer educational decision-making rights to students at the age of majority. The rights that transfer in most states are listed and differences between states are noted. Guidelines for teaching children how to make decisions are then provided and include: include your child in purchasing decisions, discuss important decision such as vacation plans and major purchases as a family, practice with your child what he or she should do if lost, encourage your child to participate in planning his Individualized Education Program (IEP), role-play IEP meetings, help your child develop good working relationships with school personnel, do not allow educators to pressure your child into making decisions he is not capable of handling, avoid being overprotective, and stay involved even after you are no longer the primary participant in the development of your child's IEP. The brief also includes information on the transfer of rights, guardianship, and graduation. (CR)

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Age of Majority: Preparing Your Child for Making Good Choices
Parent Brief

National Center on Secondary Education and Transition
and
PACER Center

May 2002

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ParentBrief

Promoting effective parent involvement in secondary education and transition.

May 2002

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Age of Majority

Preparing Your Child for Making Good Choices

Parents want their children to have the skills they need to succeed as adults. While this is important for every young person, youth with disabilities often face extra challenges. That's why they need to be actively involved in setting their high school goals and planning for their transition to adulthood well before they reach the age of majority. *(In most states, the age of majority is 18, but there are exceptions. Wyoming, for example, sets the age at 16, Pennsylvania at 21. It is important to know your state's laws.)*

The Individuals with Disabilities Education Act (IDEA) gives states the authority to elect to transfer educational decision-making rights to students at the age of majority. In a state that transfers rights at the age of majority, beginning at least one year before a student reaches the age of majority under State law, the student's individualized education program (IEP) must include a statement that the student has been informed of his or her rights, if any, under Part B of IDEA , that will transfer to the student upon reaching the age of majority. The public agency shall provide any notice required by Part B to both the student and the parents. (This regulation does not apply to students who have been determined to be incompetent under state law.)

In a state that has elected to transfer educational decision-making rights at the age of majority, students become responsible for their educational programs. Students, not their parents, are the primary participants in developing their IEPs and they become responsible for making other decisions, such as consenting to any changes in placement or requesting mediation or due process hearings to resolve disputes.

Reaching the age of majority can be an exciting time for most students.

Reaching the age of majority can be an exciting time for most students. Transferring rights to young adults who are unable to make informed decisions or take responsibility for their choices, however, carries many risks. *Will students decide to drop out of high school or accept a quick diploma and become ineligible for much-needed transition services?* Many of the decisions young adults make affect their quality of life after high school.

Some states have a legal process to determine if a student who receives special education and has reached the age of majority continues to need help in planning her or his IEP. Students may not necessarily have the ability to provide informed consent to their educational program even though they have not been determined to be incompetent. Such states have a mechanism to

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Helping Your Child Prepare for the Age of Majority

Age of majority **is the legal age established under state law at which an individual is no longer a minor and, as a young adult, has the right and responsibility to make certain legal choices that adults make.**

Rights that transfer in most states—

In states that transfer educational rights at the age of majority, all of the educational rights provided to the parents transfer to the student when he or she reaches the age of majority. These educational rights may include the right to...

- **receive notice of and attend individual education program (IEP) meetings.**
- **consent to reevaluation.**
- **consent to change in placement.**
- **request for mediation or a due process hearing to resolve a dispute about evaluation, identification, eligibility, IEP, placement, or other aspects of a free appropriate public education (FAPE).**

determine that a student with a disability, who has reached the age of majority under State law and has not been determined incompetent, still does not have the ability to provide informed consent with respect to his or her educational program. In such cases, the State shall establish procedures for appointing the parent, or, if the parent is not available another appointed individual, to represent the educational interests of the student throughout the student's eligibility under Part B of IDEA.

Helping Your Child Prepare for the Age of Majority

As parents, we can begin to help our children prepare for adulthood by looking at the role we play in their lives. *Do we try too hard to sway our children's decisions? Do we tend to speak for our children instead of letting them speak for themselves? Can we separate our own desires from our children's wishes?* It can be hard to let go of our parental role when we love our children and worry about their future. But we may need to step back and look at our own actions. Our role is to help our children to become comfortable making their own decisions and capable of making good choices. Children develop decision-making skills over time. Young children can practice these skills within the family. Older children can take increasing responsibility for the decisions that affect their lives.

Teaching Young Children How to Make Decisions

- Include your child in purchasing decisions. *Does your child help select his or her own clothing and help with grocery shopping and meal planning?*
- Discuss important decisions such as vacation plans and major purchases as a family. Routinely state your thoughts out loud so your children have a model for good decision making: *"We are not ready to decide on that yet, let's talk about it tomorrow after dinner;"* or *"Let's gather more information before we buy this."*
- Practice with your child what he or she should do if lost.

Stepping Into New Roles

Teaching Older Children How to Make Decisions

- Encourage your child to participate in planning his or her IEP and even leading the IEP meeting.
- Role-play IEP meetings with your child ahead of time to help him or her clarify what he or she wants from the meeting. Practice how to step out of the meeting to discuss a decision in private. Ask your child if he or she wants to invite anyone to the meeting for support.

Additional Tips for Helping Your Child Make Informed Decisions

- Help your child develop good working relationships with school personnel and other IEP team members so there is little disruption when he or she reaches the age of majority.
- Do not allow educators to pressure your child into making decisions he or she is not capable of handling.
- Avoid being overprotective. Do not interfere with your child's desires when it is not truly necessary.
- Stay involved even after you are no longer the primary participant in the development of your child's IEP. IDEA does not address parents' attendance at IEP meetings once a student has reached the age of majority. The school or student could, however, invite a parent to attend the meeting as an individual who is knowledgeable about the student's educational needs and abilities.

Transfer of Rights

In a state that transfers rights at the age of majority, beginning at least one year prior to the student reaching the age of majority under state law, the student's IEP must include a statement that the student has been informed that his or her rights under Part B, if any, will transfer. The school must comply with IDEA notification requirements to both the student and the parents.

Families should understand how their state implements these IDEA regulations. Ideally, the student, parents, and other family members will all continue to be actively involved in planning the services and programs for the student's transition into adulthood. As parents of children with disabilities, our challenge is to seek opportunities for our children to make choices for themselves beginning at a very early age and continuing throughout their school years. Community education programs often have classes for teens on assertiveness or independent living skills. Centers for Independent Living offer workshops on self-determination and living skills for young adults. Leadership workshops and camps can also be beneficial in teaching these skills.

Guardianship

If a state elects to transfer rights at the age of majority, IDEA requires at least one year of notice to parents and students before a student reaches the age of majority. This notice alerts families to consider whether or not their child is capable of representing him or herself.

At the age of majority, students are granted certain legal rights, such as the right to vote, marry, obtain a credit card, consent to medical treatments, make living arrangements, and sign contracts. Each of the 50 states determines what rights transfer to individuals at the age of majority within that state. Some students may not be able to recognize when a decision needs to be made, consider possible options, or recognize the consequences of their decisions without additional support. For these students, guardianship, conservatorship, or another form of representation by an advocate may be appropriate.

Under guardianship, a person is considered to be *legally incompetent*. The individual loses the authority to make all the decisions granted to adults. A person called the *guardian* is assigned by the court to make these decisions. The guardian is usually a parent. The person under guardianship is legally referred to as the *ward*.
Many states also offer limited guardianship, sometimes called *conservatorship*. People who are granted conservatorship for another individual are assigned limited decision-making responsibility based on the individual's needs. These responsibilities are carefully outlined in a court order. Conservatorship is designed to allow a person to retain as many of his or her rights as possible. A person under conservatorship is *not* considered to be legally incompetent. He or she retains as many rights as deemed appropriate by the court. Different people have different limitations under conservatorship, depending on their individual vulnerabilities. The person the court appoints to make decisions on behalf of the individual is called the *conservator*. The person who has a conservator assigned is considered the *conservatee*.

When the student reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

(A) The public agency shall provide any notice required by IDEA to both the individual and the parents;

(B) All other rights accorded to parents under IDEA transfer to the child;

(C) The agency shall notify the individual and the parents of the transfer of rights; and

(D) All rights accorded to parents under IDEA transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution [20 U.S.C. 1415(m)].

Informed Choice: Know Your Options

In some States, there may be additional laws and procedures that allow for a lesser determination of competency for specific purposes, such as competency for providing informed consent with respect to the individual's educational program. Under the State procedures established in such cases for appointing the parent, if the parent is not available, a guardian or surrogate could be an appropriate individual to represent the educational interests of the student [34 CFR Appendix P. 12617; Federal Register Vol. 64, March 12, 1999].

Obtaining guardianship or conservatorship for a person requires a petition to be filed with a court alleging that the person needs such an arrangement, a court hearing on the case, and annual reports filed with the court regarding the status of the arrangement. The petition for guardianship or conservatorship often involves numerous complicated forms, although it is not required that an attorney be involved in the process. Petitioners can obtain necessary forms from the probate court.

Guardianship, and to a lesser extent conservatorship, severely limits an individual's right to make independent decisions and should only be considered when there is no less restrictive alternative. If your child is not able to make educational decisions but does not need guardianship or conservatorship, you may want to explore procedures within your state that may allow an advocate to represent the educational interests of your child.

Graduation: Another Transition Consideration

Regular Diploma

If a student with a disability graduates with a regular diploma, the student loses eligibility for a free appropriate public education (FAPE). However, if a student graduates with any other type of diploma or certificate, the student may retain eligibility for education services.

Timely Notice

Schools must notify parents before proposing to graduate a student with disabilities because it is considered a change in placement. This notice must be given within a reasonable time before graduation to ensure that parents and students have the opportunity to plan for, or challenge, the pending graduation.

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National Center on Secondary Education and Transition (NCSET)

Access Parent Briefs and other NCSET materials on-line at: http://ici.umn.edu/ncset.

NCSET works to increase the capacity of national, state, and local agencies and organizations to improve secondary education and transition results for youth with disabilities and their families. NCSET is headquartered at the University of Minnesota, and is a partnership of six organizations, including PACER Center. NCSET:

- Coordinates national resources that connect policymakers, administrators, professionals, educators, employers, parents, and youth with disabilities to information and useful resources;
- Hosts capacity building institutes and workshops, national summits, national teleconference calls, and additional training opportunities;
- Develops research-to-practice tools for everyday use; and
- Provides technical assistance and outreach.

PACER works with NCSET to represent family perspectives and disseminate information to a national network of federally funded parent centers and the families they serve.

National Center on Secondary Education and Transition
Creating Opportunities for Youth With Disabilities to Achieve Successful Futures

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